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EXTRACTS FROM PROBLEMS OF AIR LAW, A COLLECTION OF WORKS OF THE SECTION ON AIR LAW OF THE AVIAKHIM SOCIETY OF THE USSR AND AVIAKHIM RSFSR

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16. Abstract

The first extract discusses the difficulties of developing a body of international law to govern air travel. A summary of literature and agreements is presented as well as a brief history. The second extract deals with air space over the poles and the legality of methods of claiming territory in the polar regions.

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INTERNATIONAL PUBLIC AIR LAW

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In our article entitled "The modern state of air equipment as a prerequisite for the development of air law" we pointed out how urgent the problems are which involve international air travel, what the extent is of the modern level of the state of aviation aeronautical equipment all of which dictates the necessity for correct regulation of questions involving the use of air equipment on an international scale. Having pointed out the nature of transport aviation we noted that the so-called shareholder societies of air traffic are only weapons for the political and economic expansion of modern bourgeois powers which intertwine the motives of aeronautic science in the general chorus of imperialist politics. Being a tool of the formally private-legal order, in public law works these societies on an international scale are involved both as part of the whole and as one of the elements of international politics of the large imperialist governments. /89*

On the other hand, we pointed out that the nature itself of air equipment as a tool for rapid travel to great distances makes them an object for use primarily on intergovernmental air routes of communication. As a means of communication between governments which are separated from each other by the small Balkan nations of Europe, as a means of communication between mother countries and colonies and between governments, the patrons and their vassals, aviation and aeronautics have become more and more vital tools in this field as a result of which the network of air routes has been more or less widely developed on a number of continents (Europe, America, Africa).

Therefore we have the basis for isolating the questions of air law which have an international character into a special group of

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*Numbers in the margin indicate pagination in the foreign text.

problems of international public air law whose order itself is considered to include both the elements of international public law and /90
elements of air law. In this respect, by international public air law we mean the set of existing law standards which define the rights and duties of modern collectives of governmental classes - the participants in international associations in relation to the use of air space for purposes of travel [1].

We do not intend to consider international air law as an air law in general which is, in turn, a separate branch of transportation law [2] as a special judicial disipline but following I.S Peretersкiy, we consider the independent study of air law an absolute necessity as an independent and specific object of study. Moreover, we consider it necessary to specify that we intentionally eliminate from the entire set of international air law problems those problems which occur during use of radiotelegraph and radiotelephone although this sphere of application of international air law has considerable importance.[1]

Having made these stipulations, having limited the concept of international public air law to its narrow definition we, nevertheless, cannot get around a blind spot in this fact that only with the use of air international travel will international air law be developed with adequate precision which, in turn, involves a number of vital interests of governments. Taking the fact that aviation in war is a tool which can result in certain enemy actions over the territory of another fighting country and the appropriate material damage can occur excluding the use of radio which can interfere with operation of radio stations of other countries and can be used for automatic control of unmanned aircraft but which itself cannot cause the con- /91
sequences which are the result of action of military aviation. In

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[1]On page 6 of [3] I.S. Peretersкiy states, "it seems that such an elimination of part of the problem from the general set of problems of international air law is artificial to a certain degree. But it is undoubtedly necessary to put into effect general principles of given terminology in relation to air travel. ('Air Law,')."

the same way, with an international association in peacetime, aviation involves an immeasurably large circle of interest of other states besides the radio.

In international air law more than in the whole series of other fields of international law, we see the relationship of legal adjustment to the technical and economical basis which specifies it. The overwhelming majority of international and state laws which regulate the use of air equipment (the convention on air travel of October 13, 1919, a number of separate conventions, national laws) is in agreement with its basis. More clearly unusable for many governments the political part of the convention of October 13, 1919 (sections 5 and 34) are an attempt to continue the "Versailles" laws in relation to international air travel, technical paragraphs in certain cases almost textually were introduced into the appropriate national laws [4]. Such identity of laws in this field is completely natural and an absolute necessity; otherwise, international air travel technically would run into a number of significant difficulties.

I.

We will not pause to discuss the history of international air law referred to in the article by Professor V.E. Grabarya discussing this question which is present in this collection. But we will touch on how necessary it is to consider the sources of international air law.

Normally the so-called "common law" precedes written law and private persons and official organs enter into a systematization of the problems which arise due to the appearance of elements more complex than those of common law. In relation to international air law we observe a somewhat different picture. Although attempts to create equipment lighter than air were known for a long time before the appearance of the airplane, although the appearance of aircraft

even up to World War I in varying degrees provided the possibility for their use, common air law was not successfully created. This is due to the fact that air equipment for a long time was not the object of broad use. Moreover, in a number of official documents we have already encountered the first attempts to organize the use of air law in wartime (the Hague delegation of 1899 and appropriate to it the XIV Hague convention of 1907 which forbids ejecting shells and explosive substances from air balloons in land and sea battles). With the existing level of development of aircraft by the end of the XIX century, the delegation of 1899 which was mentioned soon had a character which was more academic than practical. The appearance of this document indicates how theoretical the laws were attempting to define certain standards of international air law in the order of travel.

This systematic study of the problems of international law is related to the appearance of a work by one of the most outstanding French theoreticians, Paul Fauchille "Le Domaine aérien et le Régime juridique des aérostats" [The air domain and the legal control of aerial ballcons] which, in spite of such a large error as proclaiming freedom of air showed that he was one of the most important creaters of modern international air law. Besides this work by Fauchille we will mention other works on international air law: C.-L. Julliot in his "De la propriété du domaine aérien," [The rights of the air domain] and also his "De l'abus du droit dans ses applications à la locomotion aérienne," [Misuse of rights in application of travel in air]; J.M. Spaight "Aircraft in peace and the law," "Aircraft in war and the law," "Air power and the war rights;" J.W. Garner "La reglementation internationale de la guerre aérienne" [International regulation of air war], "La reglementation internationale de la navigation aérienne" [International regulation of air navigation]; I.S. Pereterskiy whom we have already mentioned in our book wrote "Vozdushnoye pravo" [Air law] and the brochure "Problema prava vozdushnoy voyny" [Problems of air law in war] [5].

In parallel with individual works discussing international air law we encounter works of a number of international legal organizations which to a definite degree are involved with systematizing air law. We are talking about works from the Institute of Higher International Learning founded in 1901 by Fauchille, Professor A. de Lapradelle and Professor Alvarez where at the Brussels session of 1902, Fauchille brought up for discussion regulation of the legal management of aerial ballons; the International Legal Committee of Aviation[1] founded in 1909 by Professor Delayen; the committee had seven congresses and developed an International Air Code[2] (Code International de l'Air); the International Law Association and lastly the Federation of International Aeronautics, a technical organ which can be very useful for air law. Meanwhile, on the initiative of this Federation, there was created in 1925 in Paris, an international Congress (with the participation of representatives of the USSR) on the question of international private air law. /93

All of the organizations listed above developed a number of documents which were of great importance. For instance, the Institute of International Law at the Paris Session of 1910 presented a new plan of a International Convention on air travel in peacetime and wartime developed by Fauchille. At the Madrid session of 1911, the institute adopted a number of resolutions establishing the basic principles of air law. The International Legal Committee of Aviation, as is already been mentioned, organized seven Congresses (before the war there were three congresses: in 1911 in Paris, in 1912 in Geneva and in 1913 in Frankfurt-am-Main. The association of International Law heard a number of reports on the law of air travel and in particular developed a plan entitled "The code of air war." Finally,

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[1]Abbreviation MYuKA [Mezhdunarodnyy Yuridicheskiy Komitet Aviatsii, Comite juridique International d'Aviation].

[2]See the text in section V of this collection.

the International Aeronautics Federation adopted back in 1913 at its IX annual meeting in Sheveningen the plan for a convention on international air communication. We will not discuss the works of a number of other private international congresses and certain legal organizations which took place before the war but will refer all of those interested in these questions to pages 10-24 of a book by Professor I.S. Pereterskiy [3] and to an article by V.L. Lakhtin, "Air law" in this collection

After the war the most important works by private organizations /94
were the following: the IV International Legal Congress of 1921 set up by MYuKA in Monaco which dealt with questions of bringing about the convention of 1919; the congress V of 1922 in Prague which discussed questions of landings, the nationalization of air courts and civilian responsibilities; the VI Congress in Rome in 1924 discussing the question of private air law; and the VII Congress in Lyons in 1925 discussing questions on air insurance, customs and sanitation of aviation; the Conference of the Association of International Law in 1922 in Buenos Aires dealing with questions of international private and criminal air law and the 1925 congress already mentioned set up by the National Aeronautical Federation discussing questions of private international law.

The official sources of international air law are separate conventions and agreements which are made between neighboring states and groups of neighboring states and a number of international conventions. Such separate conventions and agreements at the present time can be counted in tens and the first international act was an agreement between France and Germany in 1913 envisaging the possibility of establishing air communication between Paris and Berlin. Of the international conventions it is necessary to mention the Paris convention on air travel of October 13, 1919 and a number of clauses in the Versailles and other peace agreements of 1919-1920, the resolution of the Washington Conference of 1922 and the proceedings of the Hague jurists of 1922-1923.

II.

The object of international air law is the medium in which the activity of aircraft occurs, that is, the air space. In connection with this the basic question of a given order is the question of sovereignty over the air space.

Not intending to present a history of this problem or to draw /95
it out completely, inasmuch as this question at least for the present time is not of practical importance, the Paris Convention of October 13, 1919 decided on national laws for all states and a dogmatic argument around these problems is fairly clearly reflected in the literature. We will limit ourselves to considering just those moments which in our view are necessary for proper definition. Paul Fauchille solved this question using freedom of air allowing only the adoption by the states of the measures necessary for their protection. He proclaimed this view in his well-known work known even back in 1901 where he pointed out the danger that power over air space can lead to great difficulties for air travel just as it did for travel on the sea in a case where one allowed separate governments to claim maritime space. At the International Conference in 1910 this principle met with opposition from the English representatives who pointed out "that it is necessary to permit state law to cover the air boundaries when it is deemed necessary." However, the majority maintained the formula "air travel is free," relying in turn on the formula "the air is free, usque ad coelum," although no specific solution was adopted. From the beginning of the activity of the International Legal Committee on Aviation, a discussion was opened around the principle of freedom of the air. In 1911, MYuKA, at its congress, spoke for freedom of the air at the same time that the Association of International Law maintained the principle of state sovereignty and this principle began to be expressed in the French and English national legislation. At the present time, in all legislation and at the Paris Convention of 1919, the view which puts forward a theory of unlimited sovereignty of the air space lying over them was approved. But until now theoretically this question has

been solved by certain scholars with two approaches: toward "freedom of air" and toward limited sovereignty. Leaving the first approach to be decided by the doctrinaires whom life is passing by, who have nothing to teach, and recognizing the possibility of retaining this theory in a section of the future classless communist society when "everything will be free," we note only the setback in this approach shown by A. Henry-Couannier in his articles published at the Paris Convention of 1919 where he expresses the fear that separate governments (China - Germany) not "abuse" their sovereignty over air space and here he argues the position with the following phrase which should be written in gold letters in the history of imperialism: "as the individual must comply with society so the states must comply with the League of National when the interest of civilization requires it..." [6].

There is a good deal of interest in the so-called "theory of zones"[1] which is considered quite controversial. This theory involves the fact that the atmosphere is divided into two concentric layers of which the lower is subject to state control and the second which is international so that the upper zone of air travel is free. We will not attempt to define the altitude at which the international zone begins but do not wish to come into collision with the intrinsic negative view on this theory. We only point out that the "theory of zones" is not so "stupid" as would appear to first glance. What are the interests of the governments for flight over their territories? These include the fact that from aircraft one can make military reconnaissance of a foreign country, can throw out various objects (such as ordinary hand luggage with contraband goods which "drops" from an aircraft or a military "trunk" of an aviation bomb) and also the fact that an airplane for various reasons must land in territories of another country where there is no law on this. But if craft appear which are powerful enough to fly at tremendous

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[1]One of the theories of limited sovereignty which has the greatest "raison d'etre."

altitudes at improbable speeds how can we exclude their flying over foreign countries? Is it possible that in such cases unlimited sovereignty can remain a scholastic problem and that the proponents will be barricaded in their camps and also usque ad coelum? Can it even be that during flight over a layer of air surrounding Earth (regions that will later become a reality) will also be included in the theory of exclusive sovereignty by the proponents? We propose that in the /97
future, along with the principle of unlimited sovereignty for air space there will also be a viable principle found as the basis for the "theory of zones," for cases of the so-called "high altitude" flights and interplanetary communication. In truth, in the latter case one could talk about "interplanetary transport law!" but talking about high-altitude flights, it is necessary to pause to discuss the theoretical possibility of using the "theory of zones," which can lead to thoughtful limitation of sovereignty.

Another question which we consider necessary to note is the question of ownership of the air space located over the territorial waters of states. This fully involves the question of territorial waters as a whole. Referring to this question in the book written by Professor List Mezhdunarodnoye pravo [International law] (translated and interpreted by Professor V.E. Grabarya, GIZ. 1926) and to a book by Ye.A. Korovin entitled Sovremennoye mezhdunarodnoye publichnoye prava [Modern international public law] we wish to note the undoubted expediency of large expansion of territorial waters. This necessity is due not only to the long range of modern maritime weapons but also to the modern high-speed aircraft which in the future will be launched from aircraft carriers[1] which literally in a few minutes will be able to overcome the space over territorial waters and threaten the shorelines of cities large and small. There were such "unthinkable" cases when aircraft have flown over foreign borders and have noted their "mistake" only after completing certain military missions. We propose

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[1]Which often are incorrectly called "aircraft wombs."

therefore the completely well-founded principle put forward in the decrees of SNK[1] of the RSFSR on May 24, 1921 which establish the width of shore waters in the White Sea and the Arctic Ocean at 12 miles. This principle at the present time has been expanded[2] to the entire ocean which washes the coastal boundaries of the Soviet Union.

III.

Going on to a general analysis of the main articles of the convention on October 13, 1919 which is the basic document of international-air law, we consider it necessary to pause to discuss the following. It has been established that "each state has a full and /98
exclusive sovereignty in relation to air space located over its territory," article defines that the "territory of the state is considered national territory by the mother countries and colonies along with the territorial waters lying adjacent to the indicated territory." Such a solution to the problem is categorically and clearly for our epoch completely comprehensive and fully corresponds to the interests of states be they the bourgeois states or the union of the SSR - the countries controlled by the proletariat.

Each state has the right to forbid, for any reason, flights of airships belonging to another country over defined "forbidden zones" without limitations; however, only for certain states in this relation (article 3) did the convention, moreover obligate the delegated state to give the airship of other states the right to peaceful (in offensive) flights in peacetime over their territory under conditions of observing the rules of the convention (article 2). It is necessary to emphasize that the convention of October 13 was not immediately ratified by the states even those who had participated in developing it. Therefore,

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[1] [Sovyet narodnykh komissarov, Council of the People's Comissariat, 1917-1946].

[2] The "position on civil defense," approved by the Presedium of the TsIK [Tsentral'nyy ispol'nitel'nyy komitet, Central Executive Committee], USSR, September 7, 1923.

this question received exhaustive resolution in a number of subsequent separate conventions.

Article 4 specifies the duty for an airship found over a forbidden zone to give a signal of distress and make a landing inside the forbidden zone at the nearest airport. Here it is not indicated how this should be done in a case of the so-called "relâche forcée" that is, the forced landing in a region of a forbidden zone that is lacking in this article. In all its features this question must be solved similarly to maritime law. As to special cases we mention the forced landing of the pilot Volkovoinov in one of the forbidden zones in Japan (in a flight of several hours to Tokoyo) when flying from Moscow to Peking to Tokyo in 1925. Having come down in a fog and not knowing his location the pilot had to make a landing. The Japanese command proposed to Volkovoinov that he dismantle the aircraft, remove it from the forbidden zone and then reassemble it and continue his flight. Because this operation could destroy his plan for a high-speed flight, the pilot refused and the flight naturally was stopped. /99

Airships have the nationality of their countries and the registries which are applied on them according to the laws of appendix A to the convention (article 6) shows that this registration can be legally made in several states (article 8) or in a single state if the airships belong completely to the given government (article 7)[1].

The governments adhering to the convention are obligated to exchange copies of the registration and all changes made in the registration over the period of a month (article 9). During international flights the craft must have a designation of its nationality (article 10) appendix A. Moreover, during international flights, the

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[1]According to this article, the legal persons can be registered as owners of the aircrafts only in the case where they have the nationality of the country in which the aircraft are registered.

airship must be equipped with a special certificate on preparedness for flight issued by the government with which the ship is registered (article 11); the crew must have the appropriate logs also issued by their governing state (article 12) and these documents, if they are compiled in accordance with the rules of appendices B and E are in effect in other countries (article 13). The equipment for wireless telegraph must be on transport aircraft which carry more than 10 persons but determination of the order for their use must be laid out at the planned convention of the International commission on air travel (see article 34 on this); the equipment must be serviced only by crew members who have special permission. Establishment of radio equipment is allowed only with special permission from the responsible government (article 14).

During the flight over another country, without descent of the aircraft it must fly along a route which is indicated by the state over which the flight is made. In any case, the transit government has the right to require the pilot to make a landing at one of the airports indicated in case the appropriate indications were given (by signal) to the competent power of the flight. International air routes can be established only with the agreement of the countries over which the flights will be made (article 15). Articles 16-18 indicate the permissibility of limitations affecting commercial transport of passengers and cargo and also the possibility for making stops in the case of a breakdown in the structure of the ship with a foreign patent, design, etc. by a safety representative. Chapter V (articles 19-25) defines the rules for takeoff, route and landing with airships in international flights and regulates a series of administrative and technical questions. /100

There is particular interest in chapter VI (articles 26-29) which treats prohibited cargo. This includes explosive substances, weapons, military ammunition, photographic equipment (if the photographic equipment has no special purpose) and other objects which can be governed by the rules of the appropriate countries with any

specification that these limitations must be used simultaneously both by foreign and their own airships.

Chapter VII (articles 30-33) discusses the state airships including military, postal, customs and police aircraft designating other airships as private. For the military, customs and police aircraft a number of limitations have been set up similar to those for maritime warships.

In all of the conventions if one does not include the final article (35th), there are two political articles: 5 and 34 which are the cause for the fact that the convention for a long time has remained without confirmation by many participants and have been approved by only 22 countries as of 1927[1] and the tendency toward an increase in this number still does not exist in spite of all the measures taken by the French government. In the process of further considerations both these articles have undergone a number of modifications. Article 5 established a sharp division between the state participating in the convention and the state not participating not allowing the possibility of flight over territories of the governments which had signed, of aircraft belonging to states not participating in the convention (Article 34 discusses the creation of an International Commission on Air Travel[2] which provided domination of five victorious states. These articles had a marked impression on the "Versailles" epoch and the pretentions of the directors of the

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[1]22 nations have ratified this convention - Belguim, England, Canada, Australia, South Africa, New Zealand, Ireland, India, Bulgaria, Chile, France, Greece, Italy, Japan, Persia, Poland, Portugal, Romania, Yugoslavia, Siam, Czechoslovakia, and Uruguay.

[2]The commission held the following sessions: session I occurred in June, 1922 in Paris; II in October 1922 in London; III in February 1923 in Brussels; IV in June 1923 in London; V in October 1923 in Rome; VI in March 1924 in Paris; VII in October 1924 in Paris; VIII in April 1925 in London; IX in October 1925 in Brussels; X in May in 1926 at the Japanese embassy in Paris; XI in November 1926 in Paris.

League of Nations on the command position in relation to governments assuming its independence of the direction of the effect of the League leaders although the latter encompassed it in an infinite quantity of parade phrases. These difficulties which delayed the convention in its ratification of these articles led to their elimination. For instance, the new addition to article 5 resolves to include separate agreements on air travel with states which do not participate in the convention if these agreements do not contradict the convention. In the work, governments even with a "soft" formulation are not in agreement. Article 34 is changed in spirit although the majority vote rules remains guaranteed.[1]

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[1]Let us introduce the text of sections 5 and 34 of the Convention of October 13, 1919 changed by the International Commission on Air Travel and ratified by 22 member nations; here the text which is still undergoing, in part, continuing changes is reproduced in italics and the amendments introduced into section 5 and into section 34 are reproduced in bold face [translator's note: the bold face will be indicated by underlining in the translation]:

§5. "*No ratifying state will allow over its territory the flight of an aircraft which does not belong to the nation of one of the ratifying states* except for cases of special and temporary solutions and cases where between the state and the state in which the indicated aircraft is registered they concluded a special convention on air travel. However, this special convention must not break any of the rules of any written convention of October 13, 1919 of the states and must meet all of the demands and rules established by the convention on October 13, 1919 and its appendices. Such special conventions must be reported to the international commission on air travel which, in turn, must make these conventions known to all states participating in the convention as of October 13, 1919."

§34: There will be formed under the title International Commission on Air Travel a permanent International Commission *under the leadership of the League of Nations consisting of two representatives from each participating government: North America, the United States, France, Italy and Japan;*

one of the representatives from Great Britain and one of the representatives from each of the British dominions and from India;

one representative from each of the other ratifying states.

Each state representated in the commission (in the case of Great Britian with its dominions and India is considered as a single state) has one vote.

The international commission on air travel defines the rules for matters considered in their work and the permanent location but in truth is assembled in those areas where it is considered necessary. Its

Questions of international public air law, thus, are solved by conventions in accordance with the principle of complete

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first meeting is to be held in Paris. The invitation to the meeting will be issued by the French government as the majority of states who have signed the convention report to it on ratification of the convention.

This commission will have the following functions;

a) obtaining a proposal from each ratifying state or sending it proposals effecting changes or corrections in presentation of the current convention, reporting on adopted changes;

b) accomplishing the tasks laid out for it in the present articles and also articles 9, 13, 14, 15, 16, 27, 28, 36 and 37 of the conventions;

c) introducing changes into the appendices A-D;

d) concentrating and reporting on information of any type ratified by the government, information which affects international air travel;

e) concentrating and reporting all information ratified by the states affecting radiotelegraphy, meteorology and medicine, which have importance for air travel;

f) publishing maps for flights according to the rules of appendix F;

g) giving reports on questions which the ratifying states can propose for its consideration.

Any change of any entry in the appendices can be presented to the International Commission on Air Travel, *when this change was approved by three-fourths of the possible votes which could be made if all representatives of the states were present:* this majority must, besides the other total include at least three of the five following governments: North America , USA, Great Britian, France, Italy, Japan. This change becomes effective from the moment it is reported to the International Commission on air travel by all ratifying states. Any proposal for change in the articles of this convention will be considered by the International Commission on Air Travel regardless of who originated the proposal whether it came from a ratifying state or from the commission itself. No change of this type can be proposed for adoption by the member nations if it does not have at least two-thirds of the possible number of votes.

The changes introduced into the articles of the convention (except appendices) first of all to become effective must be formally adopted by the member nations.

Expenses in organization and activity of the International Commission on Air Travel are regulated by the member nations; the entire total is calculated so that two parts fall to North America , USA, Great Britian, France, Italy and Japan and one part falls to each of the other states.

The expenses caused by sending technical delegations are covered by the appropriate states."

sovereignty of states over their air space.[1] All of the practical requirements of the Paris convention and national legislation of separate states are subject to this very principle.

In certain advisory statutes, in particular, in the Soviet advisory ruling of 1926, one finds a resolution to questions on the order of meeting aircraft beyond the boundaries of the consulting nations whose nationality the craft belong to.

We will not discuss questions of law in air combat inasmuch as they are considered in an article by V.V. Yegeriov to be found in this Collection.[2]

In conclusion, it is necessary to state that the legal regulation of air travel equipment and interaction which occurs in this field in international associations has already been fairly well established and has a tendency toward further successful development. Disputes and contradictions remain applying to modern "politics" of imperialist nations attempting in this sphere of international relations to dictate their own terms. In this respect, the Soviet jurists dividing their opinions on independence for the first time in the world of the proletariat states from the bourgeois states and their combination as for suprema lex combine forces to maintain the theory and principle of international public air law which can provide independence and prosperity for the Soviet country which is a focus around which a combination of socialist states from the whole world will form in the future.

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[1]In the Soviet legislative data there are questions of resolving, on the one hand, in article 15 of the constitution of the RSFSR, in articles 52 and 23 of the Civil Code of the RSFSR, and on the other hand in directives of January 17 and May 24, 1921 in a series of proposals which we have already mentioned.

The questions applicable to the Soviet state air law are discussed in an article by V.L. Lakhtin; this article is presented in this collection.

[2]In this article we will not discuss such questions of international rule as aircraft and expansion of the jurisdiction over them leaving this to the book in reference [9].

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THE PROBLEM OF AIR OCCUPATION IN RELATION TO LAW FOR POLAR SPACE

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I.

The purpose of this article is to discover to what degree in general, independent of various concepts of national legislation, in solving modern international-legal concepts and principles, can air occupation be valid - a systematic consideration of the air means of travel considered as a legal method for different acquisitions in the polar region. The question is very important in that in conditions of climatic, geographic and other aeronautics, and particularly aviation, obviously is considered to be overwhelming and sometimes a single means for solution to human domination over the polar zone. If, in other latitudes of the earth's sphere, occupation of a territory or an island is made by aircraft, it is undoubtedly vulnerable inasmuch as it is difficult in most cases to propose a possibility for its crew to carry out any kind of prolonged and effective (settling, administration) occupation but, on the other hand, in the Arctic region where the concept of occupation itself is adequate to establish a temporary sovereignty and seasonal use, the air equipment can play a very irreplaceable role. One airship can provide regular control for any part of the polar circle, to obstruct (air bombardment etc.) access to it for foreign hunters or fishermen and to protect any piece of ice as decisively as any other part of the territory of their government. Not a single deer will reach a man where he can put down an aircraft. No maritime ship worn down in unfeasible combat with the icy chaos, can rival this new air threat to polar spaces. Consequently, it is no paradox that approval for the most "effective" type of occupation applicable to the pole is just by air.

II.

The question of the correct positioning of polar (Arctic) spaces which has been acute in connection with the achievements of the technology of air travel in our day alone has a rich history.

In 1818, Great Britian's government offered a reward of 5000 pounds sterling to the person who can get closer to the pole than one degree. But the attempts in the XIX century to reach the pole (by Peary - 1827 and Nansen - 1895) remained fruitless. Then in this century the achievements of technology and human energy were crowned with success: in 1909, Peary planted the North American flag on the North Pole and in 1909, 1911 and 1912, Shackleton and Scott approached the South Pole and Amundsen reached it.

However, recognition of the economic value of polar spaces (mineral riches, fishing fields, hunting, communication routes, etc.) and the appropriate international legal documentation were not found immediately. For instance, in response to a telegram by Peary to the president of the United States of America reported that "the pole is at his disposal," the latter (Taft) answered that "it is difficult to find a use for this interesting and generous gift."

There was a good deal of interest in the pole from the Canadian parliament where senator Poirée introduced a proposal in 1907 to "make a formal application for claiming lands and islands located to the north of the dominion and extending to the North Pole." In 1909, in the English House of Commons, commoner Parker addressed the cabinet with the question of whether or not the North Pole is part of Canada. At the same time the Canadian government pointed out that the entire territory of Canada lying to the west of Greenland between Canada and the pole belongs to Canada if any other party (mainly America) lays claim to it.

However, in the absence of such, the question of the North Pole up until 1923 had remained more or less in a platonic stage of solution. In connection with the equipping of the American dirigible /106 the Shenandoah for a polar trip, the North American secretary of state introduced into the maritime work of Denby at the beginning of 1924 to congress a claim for connecting the North Pole (as a continuation of Alaska) to the North American dominance." Then it was indicated that the United States "cannot permit that a huge uninvestigated zone of a million square miles adjacent to the United States should fall into other hands." The American pronouncement was met by lively argument from the English side. In London a plan for calling an international congress of polar governments was planned, that is, England, Canada, North America, Finland, Norway, Denmark and the USSR, for establishing an international regime of polar countries and their permanent neutralization. At the same time, the Canadian government protested sharply to the Washington cabinet that in the case of polar "annexations" it would protect its own "undisputed rights" for polar land.

It is very curious that in regard to the North Pole the proponents of a very broad regime of internationalization, the English government at the same time was itself using the South Pole with diametrically opposed politics made in 1908, 1923, 1924 with a number of simple declarations. The latter usually involved the form of its own authentic collision of boundaries with English powers in a very expanded concept (for example, this "group of islands...is part of the Falkland Islands and is subject to the jurisdiction of the administration of the aforenamed islands").

III.

International legal doctrines on the polar problem is itself a variegation of historical practice and variety of interests of certain capitalist countries. Waultrin proposes that polar seas and ice floes

must be subject to the rules of the free open seas but on the other hand sections of dry and fixed ice must be annexed by separate countries: in view of the specific conditions of the locality for which occupation is not required, but it is adequate that they have been discovered and notification has been made. Bal'sh proposes /107 establishing different northern and southern polar regions: inasmuch as in the first place seas and moving ice predominate they can be attached to a state territory whereas the southern (primarily of an island type) can be annexed without obstacle. Fauchille, not without foundation, indicates a number of doubts about the legal nature of ice, "significantly different both from water and from dry land and being capable, according to the nature of the matter to be only the object of its intrinsic use limited in space and time. From this, a proposal was made for the polar space in a regime of multiple condominiums or internationalization with separation of the polar region into several sectors (European, American, Asiatic) and with the appropriate collective (according to the continent) by their use. Similarly to Fauchille, Heillborn recalls the fruitless effort for the possibility of the League of Nations activity in the Arctic circle.

IV.

The interest aroused recently in studying the space of the northern Arctic circle (for example, the flights of Amundsen and Beder, the plans for creating Arctic air shareholding societies and lines) has received legal consideration in the proposals of the Central Executive Committee of the Union of SSR on April 15, 1926. According to this proposal -

"It is announced that all such discoveries on distant land and islands are territories of the Union of SSR which do not comprise at the moment of publication of this announcement, as recognized by the government of the Union of SSR, the territories of any foreign states located in the North Arctic Ocean to the north of the shore of the Union of SSR to the North Pole."

This act, in its content, is the natural development and generalization made on November 4, 1924. The Soviet government declaration is one in which the People's commissariat on foreign affairs recognized the foreign governments confirmation of RSFSR ownership of all lands and islands comprising the northern continuation of the Siberian continental plateau. Each delegation in turn added to the pronouncements made by the tsarist government in 1916. A conversation with the director of works of the Union SNK, comrade Gorbunov was printed in Izvestiya TsIK; the latter pointed out that publication of the declarations of the Union TsIK was inadequate notification in 1924 inasmuch as /108

"it applied only to the Asiatic part of the USSR and on the other hand it covers only those islands and land which are a direct continuation of the Siberian continental plateau."

It is impossible not to recognize that in its legal content, the declaration of TsIK USSR on April 15 of this year fully corresponds to the form of safeguarding noted earlier for state interests for various states (England, America, Canada) in the polar regions. Also there is an unconfirmed traditional expression based on inadequacy of one sided declarations as giving title for eventual holdings but for the government whose territory is adjoining this is an effective requirement for its occupation (population, administration, etc.). However, it is necessary to remember that the international agreement itself which puts forward occupation as the basic form for acquiring territorial supremacy and established by certain formal limitations is the Berlin act on the Congo in 1885 which has, firstly, the acquisition of territories exclusively on the African continent and secondly, for the majority of its participants at the San Zhermenskiy convention on September 10, 1919.

If one even allows that in spite of the absence of convention regulation, the demand of effective occupation corresponds to the general beginning of modern international legal consciousness

(common law), then it is impossible not to recognize that actually a similar requirement cannot be usable for the polar region: neither the fixed ice floes which form nor the floating ice floes nor the islands covered for a large part of the year themselves with an impenetrable ice coating can, as a general rule, be occupied for any great duration even less by a stable population but can be subject only to episodic (seasonal) usefulness. Therefore, in the logic of things, the nature and climate, legal judgement on polar regions is exhausted by the alternatives presented below: either an international capitalist consortium for using polar riches (a regime of internationalization in its different variations), or expansion on it of national sovereignty from the adjacent nations demanding adequate effectiveness in their occupation or more accurately the use in fact regularly by airline service. Questions of geographic boundaries of certain colliding sovereignties (for example, the sector from the pole to the extreme point of the corresponding national boundaries) and also recognition of acquisitions made earlier (see the declaration of the April decree "territories of any other foreign states are not recognized by the government of the USSR") are already questions not of principle but of legal technique.

An unsuccessful example of the Spitsbergen attempt at polar "internationalization," actually completed in 1920 by annexation of Spitsbergen to Norway, just like the special features of the Soviet state economy (the economy of the socialist society surrounded by imperialist countries) is adequately confirmed to show both the general attempts of the decree of April 15 and the direct political and economic goal of them as being pursued.

Therefore if it does not cause any doubts the expediency and timeliness of publishing the April act then, unfortunately, cannot indicate a mastered terminology. The decree of the Soviet TsIK specifies in the expressions fairly definite laws of the USSR on polar "land and islands." Moreover, in the single-minded evidence of travelers (for example, in Peary's writings) these forms of

territorial formations are not always characteristic for the north-polar basin.

This means that either the right of the USSR is exhausted by a few islands and that all the remining polar regions floating and fixed ice floes, internal lakes etc. is left by the government of the Soviet Union for free use by any capitalist predator. Obviously such an approach would be in indisputable contradiction with the spirit of this decree. Therefore, the decree in this way must include in the concept of Soviet legislation the definition of "land and islands" as including the ice blocks and the water washing around them or, in the other case, one should consider the polar sector belonging to the USSR includes open sea with all of the consequences resulting from this.